

Ron Galperin
Los Angeles City Controller
200 N. Main Street
Los Angeles, CA 90012

February 8, 2020

Dear Mr. Galperin,

I am writing to urge you to use your auditing power to investigate the City's practices with respect to the California Public Records Act ("CPRA") and to recommend policy changes to increase compliance and reduce liability. San Diego's City Auditor recently examined that City's CPRA compliance and found systematic failures, routine violations, and a culture of indifference to the law's requirements.¹ I believe you'll find the same situation in Los Angeles.

The City's inability or unwillingness to comply with the CPRA not only robs the public of its constitutionally guaranteed right to access records² but it's also a waste of money. The only method the Legislature has provided members of the public to enforce the City's compliance with the CPRA is through writ petitions filed in Superior Court. The CPRA provides mandatory fee shifting to prevailing requesters. In other words, if the City loses one of these cases, the judge is required to award attorneys' fees and costs to the requester.

According to the City Attorney's office, since they first started tracking CPRA cases separately in 2016 the City has paid out more than \$1.7 million in 26 cases to requesters' attorneys.³ In this time the City has never, not once, prevailed in a CPRA action,⁴ which is further evidence of its systematic failure to comply with the law. Both the number and the total amount of payouts are increasing and are likely to increase further in the future as awareness of the City's vulnerability increases among the local public interest bar.

I won't list the City's habitual specific violations here⁵ but you can get an accurate picture of them from the petitions listed in [Exhibit 1](#) and the pending petitions.⁶ You'll see that many of the City's compliance failures are due to City staff's ignorance of or indifference to the law's requirements as well as deliberate obstruction.

Requests are wrongly denied, delayed, and mishandled. City staff don't know what CPRA compliance software the City already owns or they don't know how to use it efficiently. Staff often fail to ask the City Attorney's office for advice on how to comply with the law. When they do ask, the advice they receive is often meant to enable obstruction rather than to

¹ See [Auditors: San Diego falls short in responding to growing number of public records requests](#). Morgan Cook. San Diego Union Tribune. December 29, 2019.

² See The California Constitution at [Article I §3\(b\)](#), which states that "The people have the right of access to information concerning the conduct of the peoples business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."

³ I obtained a list of these from the City Attorney's office via the CPRA. It is appended here as [Exhibit 1](#).

⁴ This figure only covers resolved cases; many others are still pending.

⁵ I have a number of pending petitions against the City, in many of which settlement discussions are ongoing and I don't want to interfere with those processes.

⁶ I'm sorry I don't have a list of these for you.

increase compliance or reduce liability.⁷ And when a petition is filed, most of the time the City Attorney settles quickly, which shows that not only is their advice bad, but that they know it's bad.

It's obviously not possible to eliminate CPRA litigation against the City entirely. Certainly there will always be genuine controversies between the City and records requesters about what must be released. But most current CPRA litigation is over trivial, easily avoided violations. It's possible to eliminate such cases by adopting and adhering to sensible, workable, consistent, compliant policies. A few simple changes could save the City a significant amount of money in fee awards.

If you do investigate and decide to recommend policies it would be valuable to seek input from requesters and other interested parties as to what specific forms they should take. I don't want to overwhelm the message of this letter with a list of recommendations which would necessarily be highly technical. But there is one change that the City could make in its CPRA policies that's important enough to include and which could potentially solve most of the City's compliance problems. The City should create a citywide CPRA Coordinator.

Such an office could accept CPRA requests from the public, assign them to relevant departments, and monitor and ensure timely and adequate responses to requests. This office could also centralize access to software compliance tools, such as e-discovery software, and training in their proper use. This office could also receive and investigate complaints from requesters and implement an informal appeal process, which could potentially avoid a lot of the really trivial litigation the City currently ends up settling. It's hard to imagine that this wouldn't pay for itself by reducing both litigation liability and the staff time used responding to litigation.

Thank you for your time, and please feel free to contact me for more information or if I can assist you in any other way in regard to this matter.

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Los Angeles, CA 900■■■

⁷ You might legitimately ask how I know what advice the City Attorney gives to City departments about CPRA compliance given that it's privileged. In a few cases City staff have pasted replies written by Deputy City Attorneys into response emails to me without changing them enough to hide their provenance. In other cases they CC the responsible deputy city attorney in our correspondence.

1 Exhibits

1.1 Exhibit 1 – List of 26 resolved CPRA cases since 2016

LIABILITY PAYOUTS FOR CALIFORNIA PUBLIC RECORDS ACT (CPRA) CASES - From FY2016-17 through FY2019-20 (Jul - Dec)

CLAIM #	CASE #	CASE NAME ↓	DEPARTMENT	CASE TYPE	AMOUNT
L16-01178	BS162685	Austin, Ronald v. Los Angeles Police Department	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$2,783.00
L16-00395	BS 160550	Luk, George v. Los Angeles Police Department	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$6,250.00
L16-00193	BS 159845	Anderson Barker, Cynthia v. City	DEPARTMENT OF TRANSPORTATION	California Public Records Act (CPRA)	\$20,000.00
111285	BS 155307	Cangress d/b/a Los Angeles Community Action Network v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$200,000.00
L16-01715	BS 164485	First Amendment Coalition v. City	COUNCIL	California Public Records Act (CPRA)	\$20,000.00
L18-00924	BS 171427	M.T. Towing Systems Inc. v. City	OFFICE OF FINANCE	California Public Records Act (CPRA)	\$3,551.00
L15-00594	BS 159673	Stop LAPD Spying Coalition and National Lawyers Guild v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$30,000.00
L18-00147	BS 168349	The Urban Wildlands Group, Inc. v. City	ANIMAL SERVICES DEPARTMENT	California Public Records Act (CPRA)	\$9,999.00
106074	BS 143004	ACLU & EFF v. LAPD & LASD	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$337,500.00
L19-00473	BC 719162	Brown, Michael v. City	DEPARTMENT OF RECREATION AND PARKS	California Public Records Act (CPRA)	\$40,000.00
L17-00752	BS 168240	California Rifle and Pistol Association v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$35,000.00
L19-00102	BS 174104	Joung, Hye Kyung v. City	MAYOR'S OFFICE	California Public Records Act (CPRA)	\$8,333.34
L18-02157	BS 174024	Joung, Hye Kyung v. City (BS174024)	COUNCIL	California Public Records Act (CPRA)	\$8,333.33
L18-02211	BS 174105	Joung, Hye Kyung v. City (BS174105)	MAYOR'S OFFICE	California Public Records Act (CPRA)	\$8,333.33
L19-00091	BS 174317	Los Angeles Times Communications LLC v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$40,000.00
L16-01520	BS 163755	Muslim Advocates v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$538,690.57
L19-01272	19SMCP00053	Sullivan Equity Partners, LLC v. City	PUBLIC WORKS / BUREAU OF STREET SERVICES	California Public Records Act (CPRA)	\$3,250.00
L16-01786	BS 164513	Anderson-Barker, Cynthia v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$75,000.00
L19-01514	19STCV07931	Hernandez, Israel v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$7,500.00
L19-01507	19STCV07972	Kameon, Judy v. City (DOT)	DEPARTMENT OF TRANSPORTATION	California Public Records Act (CPRA)	\$8,999.00
L19-01978	19STCV20076	Riskin, Adrian v. City	OFFICE OF THE CITY ATTORNEY	California Public Records Act (CPRA)	\$12,665.00
L19-01265	19STCP00302	Riskin, Adrian v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$10,000.00
L19-02015	19STCV21626	Riskin, Adrian v. Los Angeles City Council	OFFICE OF THE CITY ATTORNEY	California Public Records Act (CPRA)	\$4,720.00
L18-01444	BS 172216	Stop LAPD Spying Coalition v. City	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$35,000.00
L18-00737	BS 171255	Voice for the Animals Foundation v. John Lewis	LOS ANGELES ZOO	California Public Records Act (CPRA)	\$210,000.00
L17-01126	BS 169474	Winston, Ali v. LAPD	POLICE DEPARTMENT	California Public Records Act (CPRA)	\$57,500.00

\$1,733,407.57